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FILE NO. S-656

PENSIONS:
Teachers Retirement System
Military Service Credit

Honorable Roy A. Baker
D i r e c t o r
Teachers' Retirement System
of the State of Illinois
450 Iles Park
Springfield, Illinois 62706

Dear Director Baker:

I have your request for an opinion with regard to the application of the creditable service provision of the Teachers' Retirement System of the State of Illinois. (Ill. Rev. Stat. 1972 Supp., ch. 108 1/2, par. 16-127 as amended by P.A. 77-2471. Par. 16-127 was also amended by two other Public Acts of the 77th General Assembly. The resulting multiple forms were combined by P.A. 78-255 which should soon be available in published form.) Your letter presents the following factual situations:

"Howard M. Franklin became a participating member of the Teachers' Retirement System at the start of the 1934/35 school year as

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the result of his employment as a teacher in the public common schools of Illinois. His employment as a teacher continued without interruption until the end of the 1941/42 school year at which time he terminated his teaching service but not his membership in this System. He entered military service September 1, 1942 and was discharged March 2, 1946. Mr. Franklin resumed teaching at the start of the 1946/47 school year and continued without interruption until the end of the 1970/71 school year at which time he resigned. In September, 1950 he submitted proper verification of his period of military service and under 16-127, 4 years of credit were added to this account. In November, 1950 he paid \$280.37 representing the total amount due to validate 4 years of military service credit as calculated under 16-128.

In June, 1971 Mr. Franklin applied for an age retirement allowance to be payable effective June 5, 1971 the date of his separation from teaching service and based upon 36 years of service (including 32 years of teaching service and 4 years of military service) then credited to his account. In his application, Mr. Franklin advised this office that he was receiving, or anticipated receiving, military retirement pay based in part on the 4 years of military service credited to his account in the Teachers' Retirement System. Under 16-127 which at that time prevented any duplication of military service credit, we removed 4 years of military service credit from his record and refunded to him \$280.37. He was then

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retired effective June 5, 1971, and since that date has been in receipt of a monthly retirement allowance computed on the basis of 32 years of creditable teaching service.

Question 1. Shall the Teachers' Retirement System reinstate 4 years of military service credit to Mr. Franklin's account and recalculate his annuity on the basis of 36 years, rather than 32 years of creditable service.

Question 2. If the answer to Question 1 is affirmative, shall the Teachers' Retirement System accept his repayment of \$280.37 as full payment for 4 years of military service credit, or shall regular interest as provided in 16-112 be assessed from the date the payment was refunded to Mr. Franklin until the date it is repaid to this System.

Question 3. If the answer to Question 1 is affirmative, shall the increased annuity, recalculated on the basis of 36 years of creditable service, be paid to Mr. Franklin effective on the date his payment for military service is received in this office, or shall the increased annuity be paid retroactively to June 5, 1971, the date of his retirement.

C. Arnold Rupprecht became a participating member of the Teachers' Retirement System at the start of the 1938-39 school year as the result of his employment as a teacher in the public common schools of Illinois. His employment as a teacher continued without interruption until December, 1940 when he terminated his

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employment as a teacher, having at that time 2.407 years of creditable service in the Teachers' Retirement System. In May, 1941 he applied for and received a refund of his contributions as provided in 16-151 thereby terminating his membership in this System.

Mr. Rupprecht entered military service December 13, 1940 and was discharged July 31, 1962.

Mr. Rupprecht resumed teaching in the public schools of this State at the start of the 1962-63 school year, thereby regaining membership in the System. His participation in this System has continued without interruption from September, 1962 until this date.

When he resumed teaching in 1962, Mr. Rupprecht indicated a desire to repay the refund he had accepted in May, 1941. He was permitted to do so under the provision of 16-151, and repayment of the refund together with statutory interest was completed in September, 1968. Mr. Rupprecht also submitted proper verification of his period of military service. At that time (January, 1963) 16-127 contained no restriction as to duplication of military service credit. Accordingly, 21.593 years of military service were placed on his record in this System; however, no payment has been made by Mr. Rupprecht for this service. In 1967 Section 16-127 was amended so as to prohibit any duplication of credit in the Teachers' Retirement System and in another public tax supported retirement system. As the result of this amendment 21.593 years of military service credit were removed from his record.

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As indicated above, 16-127 was amended in 1972 to provide for up to 5 years of duplication of military service credit in this System and in another public tax supported system.

Question 4. Shall the Teachers' Retirement System reinstate 5 years of military service credit on Mr. Rupprecht's account and permit him to make payment therefor as provided in Section 16-128."

Question 5. Based upon the judgment of the Circuit Court in the case of Fein vs. Public School Teachers' Pension Fund of Chicago, shall the administration of the Teachers' Retirement System consider the 5 year restriction in duplicated military service presently provided in 16-127 as violative of Article VI, Clause 2, of the U. S. Constitution and therefore ineffective, and reinstate all of Mr. Rupprecht's military service (21.593 years) and permit him to make the payment required in 16-128.

Section 16-127 of the Teachers' Retirement System of the State of Illinois provides for the allowance, under certain circumstances, of credit for military service. The pertinent part of that Section provides:

"The following periods of service, subject to the limitation in paragraph (2) of Section 16-123, shall be considered creditable service, and each member shall receive credit for

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all such service for which satisfactory evidence is supplied to the board, as of the dates specified: * * * *

"(5) Any periods during times of hostilities or a declared national emergency spent in service with the military or naval forces of the United States or in educational programs that prepare for return to teaching sponsored by the federal government for persons discharged from military or naval service and, if a member returns to teaching service within one calendar year after discharge or after the completion of the educational program, the further period of not to exceed one calendar year thereafter between time spent in military or naval service or in such educational programs and the return to employment as a teacher, for which the member makes the required payments, as of the date such payments are completed.

(6) If a member enters military or naval service immediately upon termination of employment as a teacher, the credit authorized by paragraph (5) shall be determined as follows: if entry occurs during the first 6 months of a calendar year, credit shall be allowed from the date of entry; if entry occurs during the months of July or August, and the teacher was in teaching service at the end of the immediately preceding school term, credit shall be allowed from July 1 of the year in which he entered service; if entry occurs during the last 4 months of a calendar year, and the teacher was in teaching service at the beginning of the school term, credit shall be allowed from

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July 1 of such year. If a teacher enters the teaching service after the beginning of the school term, credit for military service entered into during the last 4 months of the calendar year, shall be granted from the date of entry into military service. * * * *

"The total credit granted under paragraphs 5 and 6 of this Section may not exceed 5 years for any member unless the service: (a) is validated before July 1, 1964, and (b) does not extend beyond July 1, 1963.

All service credits described in this Section shall be effective only if not used for credit in any other statutory tax-supported public employee retirement system with the exception of the Social Security Act, as amended and not more than 5 years of military service credit granted a member under paragraphs 5 and 6 of this Section which may also be used by the member to qualify for a military retirement allotment from any branch of the armed forces of the United States.

In any event such service credits shall terminate upon cessation of membership for any cause." (Emphasis added.) Ill. Rev. Stat. 1972 Supp., ch. 108 1/2, par. 16-127 as amended by P.A. 77-2471.

As previously noted, this Section has been amended numerous times and the resulting multiple forms have been combined by P.A. 78-255. The emphasized language in the above

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quote was added by P.A. 77-2471. The provision for the use of five years of military service credit for the purposes of the Teachers' Retirement System and also qualification for a military service pension became effective October 1, 1972. The provision of the Teachers' Retirement System allowing credit for military service in effect in 1971, did not allow any duplication of service credit. This office issued an opinion which determined that the statute required a denial of duplicate service credit. (Atty. Gen. Op. U.P. 1959, May 14, 1968.) The Appellate Court in Sarff v. Teachers' Retirement System, 130 Ill. App.2d 670, noted that that Attorney General's opinion was correct on the facts presented but found that although the prohibition on duplicate service credit was a valid exercise of legislative power the statutory language would not apply to a person who was collecting a disability pension not based on years of service. The provisions of the Retirement System at the time the benefits accrued determine the rights of the beneficiary. (Keegan v. Board of Trustees, 412 Ill. 430.) Therefore, it is my opinion that

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the statutory provisions in effect in 1971 prohibiting the use of the same service credits in two tax supported retirement systems, was valid.

Under the Teachers' Retirement System payments are calculated on the basis of the amount of creditable service at the time of retirement. (Ill. Rev. Stat. 1973 Supp. ch. 108 1/2, par. 16-133.) A recalculation is only allowed upon a re-entry to teaching service which extends for one year and a member may not take advantage of subsequent amendments to the system unless his service on re-entry extends for three years. (Ill. Rev. Stat. 1972 Supp., ch. 108 1/2, par. 16-150.) Therefore, as the 1972 amendment allowing duplicate credit for military service was not in effect at the time Mr. Franklin applied for and was granted his pension under this system, the Board acted properly in denying military service credit. The answer to your first question is in the negative. As your first question is answered in the negative it is not necessary to answer your second and third questions.

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As discussed above, the language limiting the dual use of service credit is effective. Thus, if service credit is being used for a military retirement allowance, it could not also be used under the Teachers' Retirement System except to the extent that that provision has been modified by subsequent legislative action. The provisions of a retirement system may be modified from time to time as the legislature determines will best serve the interest of the participants. (Keegan v. Board of Trustees, 412 Ill. 430,436.) Although the new Illinois Constitution provides additional protection for the members of State pension systems it would not prohibit an amendment of one of these systems which expands pension benefits. (1970 Ill. Const., art. XIII, sec. 5.) The 1972 modification of the Teachers' Retirement System which allows for up to five years of duplicate credit is effective. Therefore, in answer to your fourth question, it is my opinion that Mr. Rupprecht should have five years of military service credit reinstated and that he should be required to make the appropriate contribution to validate this service.

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Your fifth question raises the application of a Cook County Circuit Court decision to the statutory provision limiting dual service credits. You should note that that case did not involve the same factual background presented; nor did it involve the Teachers' Retirement System. Also, the decision was not passed upon by an Illinois Appellate Court. A Judicial opinion is authority only for what it actually decided. (White v. Seitz, 342 Ill. 266, 270.) In Bergen v. Board of Trustees, 31 Ill.2d 566, the Illinois Supreme Court pointed out that its decision interpreting the rights of a person under a particular pension system could not be read to determine the rights of other persons under other pension systems created by different statutory language. This same principle would apply to the Teachers' Retirement System.

You should also note that the United States Code Section (10 U.S.C.A., sec. 1336) cited by the Circuit Court is limited to military service pensions for non-regular service

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(i.e. retirement based on service in the National Guard or Reserves) and would be inapplicable to the factual situation presented by Mr. Rupperecht's case. In answer to question five, it is my opinion that under the current provision for creditable service, Mr. Rupperecht is entitled to only five years military service credit.

Yours very truly,

A T T O R N E Y G E N E R A L