



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Mrs. B. B. Sapp
Executive Secretary
Teacher Retirement System of Texas
Austin, Texas

Dear Mrs. Sapp:

Opinion No. O-6409

Re: Will a teacher who was in the Armed Forces be allowed to continue her teacher retirement payments for the duration and one year thereafter, or will she be allowed to continue her deposits from the date of her discharge?

We are in receipt of your letter dated January 20, 1945, reading as follows:

"We have a teacher who was in the armed services and, as provided in House Bill 602, we accepted her deposits at the same rate that she was depositing with the Teacher Retirement System before she entered the armed services.

"The member has been given an honorable discharge from the armed services.

"Will she be allowed to continue her payments for the duration and one year thereafter, or will she be allowed to continue her deposits from the date of her discharge?"

The language used in House Bill 602 is somewhat ambiguous, but we think the Legislature meant that any time spent in any war activity during the time the United States is in a state of war and for twelve months thereafter is all that should be counted.

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This construction is emphasized by the following language contained in Subsection (3) of Section 2 and Subsection (d) of Section 5 of House Bill 602, which sections read as follows:

"(3) However during the time the United States is in a state of war and for a period of twelve (12) months thereafter, time spent by a member of the Teacher Retirement System (1) in the Armed Forces of the United States of America and their auxiliaries and/or the Armed Forces Reserve of the United States of America and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto, or (2) in war work as a direct result of having been drafted and/or conscripted into said war work, shall not be construed as absent from service insofar as the provisions of this Act are concerned, but shall count toward membership service."
(Emphasis ours)

"(d) During the time that the United States is in a state of war and for twelve (12) months thereafter, a member of the Teacher Retirement System (1) in the Armed Forces of the United States or their auxiliaries and/or in Armed Forces Reserve of the United States and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto, or (2) in war work as a direct result of having been drafted and/or conscripted into said war work, shall be permitted to contribute each year to the Retirement System, a sum not to exceed the amount contributed by him to said Retirement System during the last year that he was employed as a teacher under the provisions of this Act. The sum so contributed by such member and received by the Retirement System shall be deposited by said Retirement System in the Teacher Saving Fund to the credit of the member's individual account and shall be treated in the same manner as funds contributed by the member while he was employed as a teacher under the provisions of this Act."

Construing these two subsections together, it is our opinion that a teacher who is no longer in any branch of the Armed Forces or their auxiliaries and/or Armed Forces Reserve of the

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United States and their auxiliaries and/or in the service of the American Red Cross should not be permitted to make any further payments to the Teachers' Retirement Fund until she resumes work as a teacher. She is permitted to make payments not to exceed the amount contributed during the last year she was employed as a teacher during the time she is in the Armed Forces or any of the activities mentioned in subsection (d), but after her discharge she has the status of any unemployed teacher. If and when she resumes her work as a teacher she will then contribute five (5%) per cent of her salary, not to exceed One Hundred and Eighty (\$180.00) during any one year.

Both questions are answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *C. F. Gibson*
C. F. Gibson
Assistant

CFG:EP

Carl P. Foley

