5. No joint or survival benefits may be payable to the beneficiary under Acts of 1915, Ch. 182, as amended, as found in Burns’ (1957 Supp.), Section 28-4511.

6. Any social security benefits payable for the same cause shall be deducted from such Teachers’ Retirement Fund benefits payable under Burns’ 28-4506 (c), supra.

7. The beneficiary must have qualified for such benefits prior to June 30, 1957.

If all of the conditions and requirements set out above can be met by the individual claiming survivor benefits, he is entitled to receive $100 per month from the Teachers’ Retirement Fund until the unmarried children in his care reach age 18, or until he dies or remarries.

OFFICIAL OPINION NO. 44
July 29, 1958

Hon. Walter A. Baran
State Senator
4835 Baring Avenue
East Chicago, Indiana

Dear Sir:

This is in reply to your request for an Official Opinion which reads in part as follows:

"I would like an official opinion pertaining to Chapter 166 of the Acts of 1957, entitled, 'An Act Concerning the indemnification of Police Officers by cities and towns.'

"Section 1 of this Act authorizes the city to procure insurance to indemnify police officers, and Section 2 authorizes the Council to appropriate money from the General Fund to pay any indemnities authorized to be paid under this Act.

"My question is: Can the city be a self-insurer by having the Council appropriate money for an estab-
lished fund to serve the purpose of indemnifying police officers under this Act?"

The Acts of 1957, Ch. 166, Sec. 1, as found in Burns’ (1957 Supp.), Section 48-6175 reads as follows:

“Any city or town is authorized to procure insurance to indemnify the police officers of the city or town against liability for injuries or damages to person or property resulting from alleged acts of negligence of the police officers while acting within the scope of their authority and employment.”

The Acts of 1957, Ch. 166, Sec. 2, as found in Burns’ (1957 Supp.), Section 48-6175a, says:

“The common council of any city or town, or the board of trustees of any town, is authorized to appropriate from the general fund of the city or town an amount sufficient to pay any indemnities authorized to be paid by the provisions of this act and any premiums for the purchase of indemnity insurance.”

You have recognized that Burns’ 48-6175, supra, authorizes a city or town to purchase indemnity insurance without requiring them to do so whereas Burns’ 48-6175a, supra, authorizes the legislative bodies of municipal corporations to appropriate an amount sufficient to pay the premiums for such insurance. Your question is based on authority of Burns’ 48-6175a, supra, for appropriation of “an amount sufficient to pay any indemnities authorized to be paid by the provisions of this act.”

While your letter raises no question concerning acts of a policeman which may be indemnified by a city or town, it is thought advisable to note that police officers are not agents of the city or town; therefore, a city or town has no legal responsibility for their torts. [See City of Lafayette v. Timberlake et al. (1882), 88 Ind. 330.]

Nevertheless it is conceivable that a municipality might have a moral obligation which would justify the assumption of responsibility by a municipality, such as was defined in State ex rel. Jackson, Attorney General v. Middleton (1939), 215 Ind. 219, 231, 19 N. E. (2d) 470, thus:

198
"A moral obligation means that some direct benefit was received by the state as a state or some direct injury has been suffered by the claimant under circumstances where, in fairness, the state might be asked to respond, and there must be something more than mere gratuity involved."

Such moral obligation is implicit in the requirement that the negligent act causing damage be within the scope of a police officer's authority and employment. If such were not the statutory requirement, indemnification might constitute a use of public funds for private purposes, and so be improper. A municipality cannot indemnify a police officer for wrongful acts committed in the course of his employment which do not create a moral obligation on the city so as to make such indemnification one for a public purpose. The statute in question must be limited to situations in which such a public purpose inheres.

A distinction must be made between appropriation of an amount sufficient for a specific purpose (indemnifying police officers against liability for damage resulting from negligence) and the establishment of a fund from which such indemnities may be paid.

Municipal corporations have only such powers as are granted to them by the Legislature and those necessarily implied and incidental to express powers, or indispensable to declared objectives of the corporation and to its continued achievements.

City of Indianapolis v. College Park Land Co. (1915), 187 Ind. 541, 118 N. E. 356;

Dunn v. City of Indianapolis (1935), 208 Ind. 630, 196 N. E. 528.

Acts of 1957, Ch. 166 has no express provision for the establishment of any fund, nor direction as to the management of same. Section 48-6175a, supra, authorizes the appropriation of but a "sufficient" amount to pay indemnities or indemnity insurance premiums. The establishment of a fund might involve the appropriation of sums either more or less than "sufficient," but even if the exact amount should be ascer-
tained, there is no authority for segregating it from the general fund prior to the payment.

The establishment of a fund is neither necessarily implied, incidental to express power, nor indispensable to the object of the instant legislation, therefore it is my opinion that a fund may not be established from which to pay indemnities.

OFFICIAL OPINION NO. 45

August 27, 1958

Mr. Norval L. Martin
Executive Secretary
Indiana State Teachers' Retirement Fund
145 West Washington Street
Indianapolis, Indiana

Dear Mr. Martin:

This is in reply to your recent letter requesting an Official Opinion on the question of whether or not the widow of a deceased member of the Indiana State Teachers' Retirement Fund may repay the retirement benefit paid to the member and have the retirement account established on a co-survivor basis.

It has been established by this office that a teacher's rights in the retirement fund are governed solely by the provisions of the law under which the teacher claims membership therein. 1950 O. A. G., page 49, No. 16. It is my understanding that at the time of retirement of the teacher in question his membership was governed by the provisions of the Teachers' Retirement Fund Act as amended by Acts of 1951, Ch. 142. The member applied to the Teachers' Retirement Fund for his retirement benefit without electing any survivor protection for a dependent in the form of a benefit to be paid after his death. Now the widow has requested the right to repay the excess which her husband received in retirement benefits above the amount he would have received if he had elected to provide protection for a dependent, and thereafter have the survivor benefit paid to her during her lifetime.