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.
Acts of 1951, Ch. 142, Sec. 2(i), which has been since amended and can be found in Burns' (1957 Supp.), Section 28-4511 (i), states:

"* * * Such teacher may elect to accept annuities less than otherwise receivable under this Act in consideration of annuity protection for not more than one [1] dependent as shall be recognized by the Board, or greater than otherwise receivable in consideration of a waiver of death benefit by the teacher: * * * The board shall make necessary rules and regulations for the proper administration of this provision: * * * ."

Pursuant to this authority the Indiana State Teachers' Retirement Fund Board of Trustees on August 24, 1951 passed amended Rule No. 25, which can be found in 1952 Additions and Revisions to Rules and Regulations, pp. 383 et seq. This rule was in effect when the member here in question retired and referred to the election of a survivorship annuity by teacher members. It stated: "Such notice of election shall become irrevocable nine (9) months prior to the beginning annuity accrual date * * * ." This election technically resulted in a contract for payments by the Fund to the retired teacher. Silence on the part of the teacher would be tantamount to a rejection of the survivor-annuity option and would be an acceptance of the regular annuity to be paid at retirement, with the ensuing contractual obligation between the Fund and the teacher. Under the rule of the Board, such a contract would be irrevocably binding. The rule made it unlawful for the Board to accept a withdrawal, since the election became irrevocable on both the teacher and the Board under the 1951 Amended Rule.

It is my opinion, therefore, that a beneficiary of a teacher who died while receiving retirement benefits under the 1951 Teachers' Retirement Act may not revoke an election of benefits made by the deceased teacher, for the reason that under the 1951 Rules, the Board of Trustees would not have the authority to accept such a revocation. The beneficiary has no right to repay the excess which the teacher received in retirement benefits above the amount he would have received if he had elected to provide for a survivor annuity and thereafter have the survivor benefit paid to the beneficiary during her lifetime.