therefore, unquestionably aware in making its budget of the
enlarged scope of operations under the Federal Act, and due
to the Legislature thereafter adopting Acts of 1947, Ch. 178,
supra, to generally facilitate the cooperation of the State of
Indiana in such program, I am of the opinion the General
Commission of the State Board of Education, acting as the
Board of Vocational Education, is authorized to establish the
above-mentioned facilities in accordance with the Federal
statute and regulations.

OFFICIAL OPINION NO. 3
February 18, 1957

The Honorable Harold W. Handley
Governor, State of Indiana
Room 206, State House
Indianapolis, Indiana

Dear Governor Handley:

Pursuant to your request, I am hereby issuing to you an
Official Opinion which was originally requested by Governor
Craig under the date of January 3, 1957, on the following
question:

"Can the State Board of Finance sell on the open
market long term United States Government Bonds,
originally bought at face value with money constituting
the principal of the Indiana Common School Fund, and
which bonds now have a market value of approxi-
mately 91% of the face value, for the purpose of
investing the same in bonds of school house building
corporations, the purchase of whose bonds are approved
by the Indiana Common School Fund Building Com-
mission, pursuant to the provisions of Acts of 1953,
Ch. 141?"

Article 8 of the Constitution of Indiana creates the state
common school system of public schools. Section 2 thereof
creates a common school fund and specifies of what it shall
consist.

Article 8, Sec. 3 of the Constitution of Indiana reads as
follows:
“The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.”

Article 8, Sec. 4 of the Constitution provides:

“The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School fund, as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.”

Article 8, Sec. 7 of the Constitution reads as follows:

“All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.”

Under Art. 8, Sec. 6 of the Constitution of Indiana, counties are held liable for the preservation of so much of the principal of said fund as may be entrusted to it. There is no corresponding provision creating a liability on the state treasury for the preservation of such fund on a state level. It is interesting to note that in the Constitution of the State of Idaho, regarding their common school fund, which Constitution is very similar to ours, it was seen fit to provide in that Constitution that “the state shall supply all losses thereof that may in any manner occur.” (United States v. Fenton et al. (1939), District Court, D. Idaho, S. D., 27 F. Supp. 816, 817.)

It is to be seen that under Art. 8, Sec. 4 of the Constitution of Indiana, supra, the General Assembly is mandated to make provisions for the safe and profitable investment of the principal of the common school fund and to provide for the distribution of interest thereon to the counties. Pursuant to this mandate, the Legislature has seen fit to require the common school fund in the custody of the treasurer of state and subject to the management and control of the State Board of Finance, to be invested in bonds, notes, certificates and other valid obligations of the United States. [Acts 1943, Ch. 181, Sec. 8, as amended, as found in Burns’ (1948 Repl.), Section 28-157.]
Under the Acts of 1943, Ch. 181, as found in Burns' (1948 Repl.), Section 28-150, the several counties of Indiana were authorized to retain custody of the common school funds for the purpose of loaning the same. This right was withdrawn by Acts of 1953, Ch. 75, as found in Burns' (1955 Supp.), Section 28-273. (1953 O. A. G., page 399, No. 81.)

The foregoing furnishes the authority for the investment of the principal of the common school fund in the United States Government Bonds referred to in your question.

Thereafter by Acts of 1953, Ch. 141, the General Assembly of Indiana created the Indiana Common School Fund Building Commission. Under Sec. 1 of said Act, as found in Burns' (1955 Supp.), Section 28-163, it provides:

"It is the duty of the General Assembly under the Constitution to encourage by all suitable means, moral, intellectual, scientific and agricultural improvement, and to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all. It is the considered and declared intent of the General Assembly of Indiana in the enactment of this act that due to the recognized wide-spread shortage of school buildings in which to educate the children in this state attending its common schools that the local school corporations should be assisted in their school building programs; that the common school fund under the Constitution of the state is a trust fund which may and should be used to the extent necessary to assist in the financing of building programs under such circumstances that such funds are invested in a safe and profitable manner and the principal of such fund remains inviolate; that all local school corporations should first reasonably exhaust their ability to finance such building programs before any investment of such fund is made as provided in this act; that the creation of a state commission to pass upon the investment is essential to preserving the principal of such fund; that this act is in furtherance of the duties which are imposed exclusively upon the General Assembly by the Constitution of the state in connection with the maintenance of a general
OPINION 3

and uniform system of common schools and the investment and reinvestment of the common school fund and shall be liberally construed to carry out the purposes of the Constitution of the state.”

Under other sections of said last-referred to statute, requirement is made that the Indiana Common School Fund Building Commission in approving the purchase of any bonds from school building corporations organized under the provisions of Chapter 273 of the Acts of the Indiana General Assembly of 1947, specifically finds that the investment of such principal of the common school fund in such bonds are a safe and profitable investment which will not diminish the principal of such fund.

Under Sec. 12 of Ch. 141 of the Acts of 1953, as found in Burns’ (1955 Supp.), Section 28-173, it is provided:

“The State Board of Finance is hereby authorized and directed to purchase from any school building corporation which has complied with the provisions of this act, its first mortgage bonds, the purchase of which has been approved by the commission under the provisions of this act, at and for the price and under the conditions fixed by the commission, and to pay for the same out of that part of the common school fund subject to its management and control under the provisions of Chapter 181 of the Acts of the Indiana General Assembly of 1943, as amended.”

Also, under Sec. 13 of the last-referred to statute, as found in Burns’ (1955 Supp.), Section 28-174, it is further provided:

“The state board of finance shall from time to time dispose of sufficient of the bonds, notes and securities in which the common school fund is now or may hereafter be invested, to realize sufficient funds to purchase the bonds of such school building corporations approved for purchase by the commission under the provisions of this act and which it is in this act provided shall be purchased by said board.”

Your question requires a legal answer as to authority rather than a statement of policy. When construed on a strictly legal
basis, it is apparent the Constitution mandates the Legislature to make provisions for the profitable investment of the principal of the common school fund of the state. Under this mandate such fund is invested in long-term United States Bonds which, under the facts assumed in the question presented, were purchased at face value and will, on maturity, require payment of face value, although they have a present market value of approximately 91% of the face value. Since receipt of this request for an opinion, I am now advised that these United States Bonds were, in fact, purchased at a discount so that the actual price paid therefor was less than their present market value and that, if held until maturity, will require payment of face value.

From the foregoing, the state is not a guarantor of said fund, but under constitutional mandate to see that the principal thereof is not diminished and remains inviolate for the purpose for which it was created. Under such circumstances, it would seem the main question pending is: What is the principal of the common school fund? The answer to this question is clear that it is a fund existing and at present invested in United States Government Bonds. Its value is what the bonds are worth on the open market. It may be that if retained until maturity, these same securities would represent a larger sum of money. However, the present common school fund has only a certain value at the present time and under the facts recited, I am unable to see how the principal of such fund is, in fact, diminished within the meaning of the Constitution. Under such circumstances, I am of the opinion such bonds could legally be sold on the open market at their present market value.

However, it is pointed out that the matter of policy might be an entirely different proposition. Policy is clearly to be determined by the Indiana Common School Fund Building Commission at the time it approves any purchase of school building corporation bonds, under the provisions of the Acts of 1953, Ch. 141, supra.