

estate located in the State of Indiana, these bonds would not fall within that classification due to the qualification in the statute that “* * * All obligations secured by such first mortgage may not exceed sixty per cent (60%) of the appraised value of the real estate securing the same and shall mature in not more than sixteen and two-thirds ($16\frac{2}{3}$) years from the date of such obligations. * * *”

The bonds in question are dated September 1, 1956, with maturity date staggered from November 1, 1960, to November 1, 1987. Therefore, all such obligations secured by such first mortgage do not mature within the specified limitation of sixteen and two-thirds ($16\frac{2}{3}$) years from the date of such obligations. Also no showing is made of the appraised value of the real estate which is security for the bonds.

I am, therefore, of the opinion the Indiana State Teachers' Retirement Fund Board is not authorized to invest in these bonds as they do not meet the requirements of the Indiana State law governing securities that may be purchased by said Board.

OFFICIAL OPINION NO. 41

August 29, 1956

Mr. B. W. Johnson
Executive Secretary
Indiana State Teachers' Retirement Fund
145 West Washington Street
Indianapolis, Indiana

Dear Mr. Johnson:

Your letter of August 8, 1956, in which you request an Official Opinion has been received and reads as follows:

“The Indiana State Teachers' Retirement Fund Board desires your official opinion in regard to Chapter 173, Acts of 1955. This Act provides that the Teachers' Retirement Fund Board may place all of its securities in the hands of a bank or trust company located in the State of Indiana as custodian. The same Act sets out that such securities shall be counted at least once each year.

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“Since the Teachers’ Retirement Fund Board has employed such a bank and has received safekeeping receipts for said securities, the Board is of the opinion that it does not have to be present for the counting of said securities, but that said inventory may be made by said bank and the State Board of Accounts. The State Teachers’ Retirement Fund Board desires your official opinion in regard to this question.

“Also, what is your official opinion in regard to the following question: Is it mandatory that the State Board of Accounts inventory the above mentioned securities each year?”

The Acts of 1955, Ch. 173, Sec. 1, referred to in your letter, amends Acts of 1915, Ch. 182, Sec. 11, as found in Burns’ Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-4508, and, in part, reads as follows:

“For the purpose of adequately safeguarding the securities which may at any time, be in the custody of the board of trustees of the Indiana state teachers’ retirement fund, the board is hereby authorized and required to rent safety deposit boxes or vaults of one (1) or more banks or trust companies located in the State of Indiana and to deposit and keep therein all securities belonging to the fund *or to place all of its securities in the hands of a bank or trust company as custodian. Said bank or trust company, located in the State of Indiana, shall clip coupons, surrender matured issues for collection, and receive the proceeds of all collections for the fund. Said bank or trust company shall furnish such bond for the faithful performance of its duties as the Indiana state teachers’ retirement fund board shall require.* Whenever any securities shall have been purchased, such securities shall be delivered to the board either at its office or at the bank or trust company in the State of Indiana, to be designated by the board. No such securities shall be received unless there be present the executive secretary and one (1) or more members of the board whom the president shall have appointed by order of the board, or in the absence of the executive secretary two (2) or more members of the board whom

the president shall have appointed by order of the board. The securities so received shall be counted by the two (2) or more persons so present, and a receipt therefor shall be executed in duplicate and shall be signed by each of the two (2) or more persons so present. The original of such receipt shall be delivered to the person, firm or corporation from whom such securities are purchased and the duplicate thereof shall be preserved in the files of the board. Whenever it becomes necessary to open any of the safety deposit boxes or vaults for any purpose whatsoever, such safety deposit boxes or vaults shall be opened only in the presence of the executive secretary of the board and one (1) or more members of the board of trustees who shall have been appointed by the president by order of the board, or in the absence of the executive secretary two (2) or more members of the board who shall have been appointed by order of the board *or by the bank serving as custodian of said funds*. The board is also authorized to insure such securities, against loss by fire, theft or burglary, in one or more insurance companies authorized to transact business in this state.

“All securities in the possession of the board shall be counted at least once each year by two (2) deputies of the state board of accounts, or by one (1) deputy and a field examiner or by two (2) field examiners, to be designated by the state examiner; and the executive secretary of the board and one (1) or more members of the board who shall have been appointed by the president by order of the board or in the absence of the executive secretary two (2) or more members of the board who shall have been appointed by the president by order of the board. Upon the completion of such count, the persons performing that duty shall prepare a list of the securities so found to be in the possession of the board, the amount of each such security, and the aggregate amount of all of the securities so held in custody, and shall sign such list in duplicate, the original of which shall be deposited with the state teachers' retirement fund board and the dupli-

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cate of which shall be kept in the files of the state board of accounts." (Our emphasis)

The portion of said statute above emphasized is new language added by the 1955 amendment of said statute. Prior to such time, said investments were required to be kept in rented safe deposit boxes or vaults and the clipping of coupons was required to be performed by the members and officers of said teachers' retirement fund board, as above specified. [1954 O. A. G., page 79, No. 22.]

By the insertion of the new language in said statute, it is shown that such securities could be retained in the possession of said board and placed in such safe deposit boxes or vaults, or, in the alternative, a bank or trust company could be named as custodian, which bank or trust company would then clip the coupons, surrender matured issues for collection and receive the proceeds of all collections for the fund. In the performance of such duties, said custodian must be bonded for the faithful performance of its duties.

The provision for the yearly counting of such securities was in said statute prior to its amendment in 1955. It only requires such yearly counting and reporting of "all securities *in the possession* of the board." When the custodial plan is used they would not be considered in the possession of the board but are in the possession of the custodial institution. Under these circumstances, and while in the possession of the custodian, I am of the opinion the requirement for the yearly tabulation of the securities is not required by the above statute.

As to your second question, I believe the State Board of Accounts should inventory these securities once each year under and pursuant to the provisions of the Acts of 1909, Ch. 55, Sec. 9, as amended, and found in Burns' Indiana Statutes (1951 Repl.), Section 60-211.