Since the deposits concerning which you inquire represent monies belonging to the patients of the State Hospital at Evansville, they are not impressed with a public interest nor designed for a public use, and are, therefore, not "public funds" within the meaning of the Depository Act. Therefore, the bank having custody of such deposits cannot be required to list such for the Public Deposits Insurance Fund.

OFFICIAL OPINION NO. 30

April 21, 1954

Mr. B. W. Johnston
Executive Secretary
Indiana State Teachers' Retirement Fund
336 State House
Indianapolis 4, Indiana

Dear Sir:

Your letter of March 31, 1954, has been received and is as follows:

"We request your Official Opinion upon construction of the Indiana State Teachers' Retirement Fund law of 1953 [Acts of 1953, Chapter 149, Section 2, subsection (h)] relating to the privilege given the teacher of paying 'into the basic annuity fund such amounts as he may desire for the purpose of supplementing the annuities provided herein.'

"This provision continues as follows: 'And the board shall provide a simplified actuarial table for purpose of converting such amounts into annuity upon the same basis as assessments required hereby, taking into account the forfeitures and compound interest herein otherwise provided.'

"The retirement fund law provides for payment of annuities from two sources:

"First, the basic annuity account, created by payment of specified assessments by the teacher, and contributions by the state, up to a specified maximum number of years of service."
"Second, the additional annuity fund, created entirely by teachers' voluntary deposits, plus 3% interest thereon, added by the retirement fund.

"The actuarial tables used to determine the annuity yield under these separate funds are not the same. The basic annuity table gives credit to retiring members for a proportion of the forfeitures of principal and interest on the part of teachers who withdraw from service before earning an annuity.

"The additional annuity table gives return only for the actual money the teacher has paid into the additional annuity fund, with accumulated interest thereon.

"The retirement fund's actuary has advised the board of trustees that no forfeitures or interest credits accrue to a teacher's account for funds paid in or service rendered beyond the maximum years specified in the law.

"The board, therefore, agreed at its meeting January 20, 1954:

"'that the contribution sums paid by the teachers be limited to the amount necessary to provide the maximum annuity as established by the actuarial tables, and that any additional sums paid by the teacher be placed in additional annuity under Rule 22 of the rules and regulations governing administration of the retirement fund law.'

"The board's right to make this distinction as to the actuarial table that shall be applied has now been questioned by teachers who wish to pay larger sums into the basic annuity account.

"We request your opinion as to whether or not the retirement fund board has legal authority thus to determine which actuarial table shall be used, in case deposits exceed the limit of total assessments due."

The above-referred to statutory provision is Sec. 14 of Ch. 182 of the Acts of 1915, as amended, Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-4511 (h). This statute is clear and unambiguous and a teacher coming under the pro-
visions of said Act is privileged to pay into the basic annuity fund such amounts as he or she may desire for the purpose of supplementing the annuity provided for in said Act. The statute further provides, with regard to such supplemental payments, that:

"* * * the board shall provide a simplified actuarial table for the purpose of converting such amounts into annuity upon the same basis as assessments required hereby, taking into account the forfeitures and compound interest herein otherwise provided * * * *"  
(Our emphasis)

This language is not subject to construction, but must be followed.

It is a uniform rule of statutory construction that a statutory provision, clear and unambiguous on its face, need not and cannot be interpreted by a Court.

Sutherland Statutory Construction, 3rd Edition, Section 4502;

Hord v. State (1907), 167 Ind. 622, 641, 79 N. E. 916;


Attention is also directed to the following Official Opinions of this office where said principle above announced was applied: 1945 O. A. G., page 164, No. 35; 1945 O. A. G., page 372, No. 92; 1945 O. A. G., page 339, No. 84.

I am, therefore, of the opinion that under the foregoing statute the board is required to provide a simplified actuarial table for the purpose of converting such additional amount of teacher contributions into an annuity and that the table shall be upon the same basis as is applicable to assessments paid as required by said Act, which shall take into account the forfeitures and compound interest otherwise provided in said statute. I am, therefore, of the opinion the restrictive action of the board at its January 20, 1954 meeting, referred to in your letter, is void as contrary to the specific requirement of the statute.