July 8, 1954

Mr. Cecil Bolinger
Executive Secretary
Public Employes’ Retirement Fund
707 Board of Trade Building
Indianapolis 4, Indiana

Dear Mr. Bolinger:

This is in reply to the letter of your predecessor, in which he inquired as follows:

"Since April 1st of 1951 in the administration of Chapter 313 of the Acts of 1951 and the Federal State Agreement we have held that Bus Drivers employed by Townships or School Corporations pursuant to the provisions of sections 28-3901 to 28-3936 are private contractors self-employed and are not covered under Social Security as township employees; with one or two exceptions, those being in school corporations where the school corporation owned the buses, paid all maintenance and operating expenses and employed individuals to drive the buses.

"One case which was referred to the Social Security regional office in Chicago and answered by the Office of the General Counsel in Baltimore, referred to the North Judson Consolidated School Corporation. The other was the Greencastle Consolidated Schools where a similar situation was in effect at the time coverage was elected.

"We are now requested to pass upon a situation in Franklin Township where the township owns the school bus and all expenses in connection therewith are paid by the Township. The bus drivers being paid a salary for driving the bus.

"An opinion rendered by your office several years ago under the question concerning the State’s Workmen’s Compensation laws, your office held that all bus drivers were independent contractors.

"In your official opinion are bus drivers employed to drive and operate equipment owned and maintained in..."
its entirety by a school corporation to be considered as private contractors or employees of the School Corporation and eligible for Social Security coverage as employees of the corporation?

"Your official opinion in this matter is requested so that this matter may be cleared."

The answer to your question involves a consideration of the statutes relating to the letting of school bus contracts. The Acts of 1945, Ch. 210, Sec. 7, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-3936 provides as follows:

"‘School-bus driver’ defined.—The term ‘school-bus driver’ as used in this act [§§ 28-3930—28-3936] shall be construed to mean the driver of any vehicle or conveyance used to transport public school pupils over an established route to and from any public school in this state. [Acts 1945, ch. 210, § 7, p. 970.]

The Acts of 1943, Ch. 127, Sec. 1, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-3927, provides in part as follows:

"The term ‘school-bus driver’ shall be construed to mean any individual who, under contract with the public school authorities of the state of Indiana transports school children by automobile, hack, conveyance, motor vehicle or other vehicle of any kind, to and from school or from school athletic games or contests or other school functions. [Acts 1943, ch. 127, § 1, p. 383.]

The Acts of 1945, Ch. 210, Sec. 6 makes it mandatory that all school bus driver contracts comply with the provisions of that Act. It therefore follows that said Act applies to all school bus drivers and any person driving a vehicle or conveyance used to transport public school pupils over an established route to and from a public school come within the provisions of that Act. Under other provisions of said Act, school bus driver contracts are let by the Trustee with the advice of his Advisory Board to the lowest and best responsible bidder [Acts 1945, ch. 210, sec. 1]. The letting of such contracts is in many respects similar to that of the letting of a contract for public
work the successful bidder is required to carry specified insurance; he is required to give a surety bond for the faithful performance of the contract; and his contract can be terminated only for incompetence and negligence in the failure to perform his duties under the contract. This is true whether the contract involved the operation of equipment owned by the school corporation or whether such equipment be furnished by the bidder. The interpretation and construction of such contract is to be had with reference to the principles of the law of contracts, and the same construction in effect is to be given thereto as are given to similar contracts between individuals.

In 43 Am. Jur., Public Works and Contracts, § 66 it is said:

"In determining the obligations imposed and the question of performance or breach thereof, the same construction and effect should be given to contracts with governmental bodies as are given to similar contracts between individuals. * * *

Under the general law of contracts it is my opinion that the contract awarded to the lowest and best responsible bidder for the transportation of public school pupils is an independent contract, and that the successful bidder is an independent contractor. It follows, therefore, that such successful bidder to whom is awarded such contract is not eligible for Social Security coverage.

It has been suggested that one employed by a Trustee other than under the provisions of the school bus law would be an employee and eligible for social security, with the school township matching funds. However, such an employment would be an illegal and invalid employment.

The above conclusion is in accord with Official Opinion No. 23 of the Attorney General for the year 1948. [See 1948 O. A. G., page 108, No. 23.] The above conclusion is also in accord with the holding in California School Township, Starke County v. Kellogg (1941), 109 Ind. App. 177, 33 N. E. (2d) 363.

It is therefore my opinion that a school bus driver’s services must be contracted for pursuant to the provisions of the Acts of 1945, Ch. 21, under which a contract is let to the lowest and

150
best responsible bidder, and that the successful bidder is an
independent contractor and not eligible for social security
coverage as an employee of a school corporation.

OFFICIAL OPINION NO. 42
July 9, 1954

Mr. Howard Patrem, Director
Board of Industrial Aid and
Vocational Rehabilitation for the Blind
536 West 30th Street
Indianapolis, Indiana

Dear Mr. Patrem:

I have your request for an opinion which reads as follows:

"I would appreciate your official opinion as to the
legality of the Board ofIndustrial Aid and Vocational
Rehabilitation for the Blind, Acts of 1915 amended
1947, Chapter 97; of processing linens and toweling for
the various state institutions and hospitals, and paying
wages to the blind people performing work on these
items.

"All raw materials would be purchased through the
Division of Public Works and Supply on bid basis and
then processed by blind employees, the purpose and
intentions of this agency.

"At present our products are sold retail and whole-
sale on the open market, therefore we are not classified
by law as a member of institutional industries.

"The Board of Industrial Aid and Vocational Reha-
bilitation for the Blind would not process all linen and
toweling material required by the state, but only a por-
tion thereof."

By the Acts of 1915, Ch. 59, as found in Burns' Indiana
Statutes (1933), Section 22-801, the Board of Trustees of the
Indiana School for the Blind performed the duties imposed by
the provisions of that Act. This Act provided by Section 4