Mr. John Peters  
Treasurer of State  
242 State House  
Indianapolis, Indiana

Dear Mr. Peters:

This is in reply to your letter in which you inquire as to the following:

May money from the State Police Pension and Benefit Fund be invested in Indiana Toll Road bonds?

The following language concerning the investment of the funds about which you inquire is found in the Acts of 1937, Ch. 54, Sec. 1, subsection (h), as amended, as found in Burns' Indiana Statutes (1952 Repl., 1953 Supp.), Section 47-835, as follows:

"(h) The term 'pension trust' means the agreement between the department and the trustee under the terms of which an actuarially sound retirement pension plan is established and operated for the exclusive benefit of the employee beneficiaries subject to the following limitations:

* * *

"(10) The trust fund shall not be commingled with any other funds and shall be invested only in accordance with Indiana laws for the investment of trust funds, together with such other investments as may be specifically designated in the trust agreement."

Section 6 of the above cited Act, as found in Burns' Indiana Statutes (1952 Repl.), Section 47-480 also provides in part as follows:

"* * * The trustee shall receive and hold as trustee for the uses and purposes set out in the supplementary trust agreement all funds paid to it as such trustee by the department or by any other person or persons. The trustee shall hold, invest, and reinvest the police benefit
fund in such investments as it is permitted under the laws of Indiana to invest trust funds and such other investments as may be specifically designated in the supplementary trust agreement. * * *

The Pension Trust Agreement, Section 20 (a) provides:

"Such investments as the Trustee may be authorized to invest trust funds under the laws of the State of Indiana."

In view of the foregoing, it would appear that the Indiana State Police Pension and Benefit Funds should be invested in accordance with the provisions of the Acts of 1945, Ch. 184, Sec. 1, as found in Burns' Indiana Statutes (1949 Repl.), Section 31-501. There is no authority in this Section for investing the State Police Pension and Benefit Funds in the Indiana Toll Road bonds. The Legislature has apparently recognized that the above cited statute does not authorize investment of trust funds in toll road bonds and this situation was dealt with, in certain respects, by the Acts of 1953, Ch. 131, as found in Burns' Indiana Statutes (1949 Repl., 1953 Supp.), Sections 36-3223 and 36-3224, which provide in part as follows:

"Every financial institution, insurance company and trust fund, in addition to the investments now authorized by law, is hereby authorized and empowered to invest any of its funds, of any kind or character in any toll road revenue bonds of the State issued by The Indiana Toll Road Commission pursuant to Chapter 281 of the Acts of the Indiana General Assembly for the year 1951, and acts amendatory thereof and supplemental thereto, and such bonds are hereby declared eligible for deposit by any financial institution, insurance company or trust fund under any law of this State providing for the deposit of securities or funds."

"* * * 'Trust fund' as used herein shall be limited to private trust funds." (Our emphasis)

It will be noted that public trust funds are excluded from the purview of the foregoing Act. I believe the Indiana State Police Pension and Benefit Fund is a public trust.
Storen, State Treas. v. Sexton, County Treas. et al. (1936), 209 Ind. 589, 610, 200 N. E. 251, 260.

In the above case the Court said:

"The police pension fund and the firemen pension fund are trust funds created by statute, administered by a statutory board of trustees, of which the city treasurer is treasurer. The funds are raised partly by taxation, partly by the diversion of other public moneys and partly by assessment upon the salary of members of the police and fire forces. The trusts are created and controlled by statutory provision. The statute provides for the investment of funds belonging to the trusts, except such as are needed for current expenditures, in interest-bearing government or municipal securities. Nothing is said in the statutes concerning the deposit or safekeeping of current funds which are not to be invested, except that the treasurer of the city shall be responsible for them. The trusts are public trusts, otherwise the levy of a tax for their support would not be justified. * * *"

See also State ex rel. Hall v. Board of Trustees of Police Relief and Pension Fund of City of Lakewood et al. (1948), — Ohio —, 78 N. E. (2d) 719.

Therefore, I am of the opinion, that the Indiana State Police Pension and Benefit Funds may not be legally invested in Indiana Toll Road bonds in the absence of additional statutory authorization. For example, see Acts of 1953, Ch. 250, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl., 1953 Supp.), Section 60-1618 which specifically authorizes the investment of moneys held by the Public Employes' Retirement Fund in Indiana Toll Road bonds.