teacher is defined by Chapter 182 of the Acts of 1915 (§§ 28-4501–28-4511) and all acts amendatory thereof and supplemental thereto."

The last-referred to statute is the one which authorizes the extension to the employees of this state and its political subdivisions of the benefits of the Social Security Act.

The foregoing statute would, in my opinion, disqualify such teacher-clerk from such membership in the Federal Social Security through her employment as such qualified and certified teacher-clerk.

OFFICIAL OPINION NO. 22

March 18, 1954

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

Dear Mr. Johnson:

Your letter requesting an Official Opinion has been received and reads as follows:

"The Board of Trustees of the Indiana State Teachers' Retirement Fund has under consideration a plan to place all of its securities in the hands of a bank or trust company as custodian, said bank to exercise the powers of safekeeping such securities and also clipping coupons, surrendering matured issues for collection, and receiving the proceeds of all collections for the account of the Fund.

'We request your official opinion as to whether such action is possible under the provisions of the State Teachers' Retirement Fund Law as it now stands. Section 11 of Chapter 182, Acts of 1915, as amended in 1945 (Section 4, Chapter 328, Acts of 1945) gives the Board of Trustees of the Fund greatly increased power as to the control and handling of the securities in its possession; and authorizes the Board to employ
an assistant as well as to employ competent investment counsel.

"In your opinion, if all adequate steps were taken for the safeguarding of the security account by sufficient protective bonds, would the Board be legally able to place the control and handling of the account in the hands of a bank or trust company? Such a custodian would be much better equipped to clip and collect coupons and render protective care to the securities than is possible under the present method of having the individual board members and employees of the Retirement Fund Office personally handle the securities each month."

Acts of 1915, Ch. 182, Sec. 11, as amended, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-4508 provides in part 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 city of Indianapolis and to deposit and keep therein all securities belonging to the fund. Whenever any securities shall have been purchased, such securities shall be delivered to the board either at its office or at some bank or trust company in the city of Indianapolis, 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. The board is also authorized to insure such securities, against loss by fire, theft or burglary, in one (1) 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 duplicate of which shall be kept in the files of the state board of accounts.

“The board of trustees shall have authority to employ not more than one (1) assistant if deemed necessary to carry out the provisions of this act and said board shall have the right to bond any or all employees of the board for the protection of the fund. The state board of finance shall determine and designate from time to time the amount of bond to be given by the members of the
The above statute in detail requires the securities in the hands of the board of trustees of the Indiana State Teachers' Retirement Fund to be safeguarded under the very detailed procedure outlined therein.

The case of Silver, Burdett & Co. v. Indiana State Board of Education et al. (1905), 34 Ind. App. 438, 72 N. E. 829, required the court to review the procedure to be followed by the State Board of School Book Commissioners, in adopting textbooks. On page 457 of the opinion the Court said:

"It is firmly established rule that statutory boards or statutory officers, acting under statutes prescribing their duties and conferring upon them powers, must adopt and follow the method prescribed. (Authorities cited)"

On page 458 of said opinion the Court further stated:

"* * * Statutory boards and officers must act within the scope of their authority and in obedience to the dictates of the statute under which they exercise authority, and when a statutory method is prescribed they have no discretion to say when the statute may be strictly complied with, and when it may not be followed. Such boards and officers can only discharge the full measure of their duties by doing that which the statute commands, and doing it in the manner prescribed."

The case of Hall et al. v. State ex rel. Freeman (1944), 114 Ind. App. 328, 52 N. E. (2d) 370, was an action upon an official bond of the town marshal to recover damages for assault and battery and false imprisonment. The validity of the attempted arrest of the plaintiff was before the court for determination. On page 332 of the opinion the Court, in part, said:

"That the grant of power to a public officer carries with it a mandate that such power shall be exercised for the public good and in the manner prescribed by law is too well settled to admit of argument as is also
the principle that in such instances the words 'power' and 'authority' may be construed as 'duty' and 'obligation.'"

Since the Legislature, under the foregoing statute, has prescribed the duties and functions of the board of trustees and officers of the Indiana State Teachers' Retirement Fund, I am of the opinion that such requirements must be complied with and that the plan suggested in your letter is not authorized.

If the foregoing duties are found, on experience, to be overly exacting or impractical, the only remedy is relief by the Legislature.

OFFICIAL OPINION NO. 23
March 24, 1954

Hon. Eugene Bainbridge
State Senator
8309 Northcote Avenue
Munster, Indiana

Dear Senator Bainbridge:

This is in reply to your letter of March 9, 1954 in which you inquired as to the following:

May the Mayor of Whiting, Indiana, run for nomination for the office of the Auditor of Lake County?

Your letter further states that the Mayor's term of office expires December 31, 1955, and that there is now and there has been for the past thirty (30) years a City Judge in the City of Whiting who is nominated and elected.

The Indiana Constitution, Art. 7, Sec. 16, provides as follows:

"No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office."

The question as to whether the Mayor of a city was the