reserve the right to review the contract to see whether or not same is reasonable, necessary and within the sound discretion of the Board or Officer making same, it is my opinion that it may be unwise to enter into this type of contract for a period beyond the term of office of the trustee. A contract of this type is always subject to court review. What is reasonable and what is necessary will depend upon the facts in each case. There is no yardstick or set rule. Each case must stand or fall on the facts in issue. See Moon v. School City, supra. And, it is further my opinion that the contract should not be entered into until after an appropriation has been made, otherwise, same is invalid. See Miller v. Jackson Township, 178 Ind. 503.

OFFICIAL OPINION NO. 16
March 13, 1950.

Mr. Robert B. Hougham,
Executive Secretary,
Indiana State Teachers,
Retirement Fund,
336 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of November 28, 1949, has been received, requesting an official opinion on the following question:

“If a member has transferred to the 1945, 1947 or 1949 laws, does the limitation, as to interest charge, apply to all his arrearages, including those accruing under the 1921 and 1939 laws; or does it apply only to charges arising under the laws containing the limitation?”

Supplementing your request, your letter furnishes the following information:

“The state teachers’ retirement fund law, Acts of 1921, page 761, provided, as to arrearages, that ‘deferred payment or adjusted accounts must bear interest
at 4% per annum which shall be compounded if not paid.'

"This language has not been materially changed in subsequent amendments, except as to the rate of interest.

"However, in Acts of 1945, page 1519, the following limitation appears: 'No interest shall be charged for the time not credited to the teacher.' This limitation is present also in the amendments of 1947 (Acts 1947, page 1422) and 1949 (Acts 1949, page 353).

"It has been the practice of the teachers' retirement fund to charge interest continuously upon deferred arrearage accounts under the 1921 and 1939 laws, whether or not the member was actively teaching, up to the time the member retires. If the member retires on annuity and subsequently returns to teaching, interest has been charged through such period of retirement.

"Under the 1945, 1947 and 1949 amendments interest is not charged through periods when the member is not receiving service credit for teaching; interest is not charged over a period of retirement, if the member subsequently returns to active service."

Clause (h) of Section 2, Chapter 130, Acts 1949, provides as follows:

"Teachers coming under the provisions of this act shall be privileged to pay an amount equal to the amount which would have accumulated from their contributions with compound interest had they been members under this act for the number of years which they claim for prior service, provided that a teacher may waive his right to any previous years of service, but such waiver may be made only at time of transfer to the fund. These payments may be made in cash the first year or in a series of installments according to the rules and regulations of the board of trustees of the Indiana state teachers' retirement fund. Provided, however, That deferred payment or adjusted accounts
must bear interest which shall be compounded if not
paid. No interest shall be charged for time not credited
to the teacher and no interest shall be credited to the
teacher's account for more than thirty-five years of
service or until age sixty, whichever is later. Upon
retirement, the basic annuity of the teacher shall be
the actuarial equivalent in terms of annuity of the total
amount in the teacher's account contributed by teacher
and state including compound interest as herein other-
wise provided, based on the rates of assessment and
rules and regulations of the board herein authorized.”
(Our emphasis.)

The question as to what arrearages were payable under the
1945 amendment to the Teachers' Retirement Act was fully
considered in an opinion of this office to your office, being 1945
Indiana Opinions of the Attorney General, page 521, Official
Opinion No. 119. On pages 524 and 525 of said opinion it was
held:

"It is therefore necessary to consider whether they
are entitled to an annuity under the provisions of the
1945 Act as coming within Paragraph (2) of Section
8 of said Act. In determining this question we should
consider the general scope and purpose of the Act to
determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555,
567;
State ex rel. Bailey v. Webb (1939), 215 Ind. 609,
612.

"We should also consider other Acts in pari materia
and the legislative history of the Act.

Sherfey v. City of Brazil (1938), 213 Ind. 493, 497,
498;
City of Evansville, et al. v. Summers (1886), 108
Ind. 189, 193;
(1887), 113 Ind. 373, 379.

"Such a consideration shows that it was plainly the
intention under the amendments of 1921, 1937, and
1939 above referred to that those teachers who had elected under the original Act or amendments thereto were to be members of the Fund therein provided and were to receive the benefits of that amendment on the payment of arrearages under the conditions of that Act.

"See Paragraph (2) of subdivision (a) of the 1939 amendment which reads as follows:

'(2) Those teachers who entered service in such school of the state prior to July 1, 1921, but who were not members of the state pension system, and who, before December 31, 1936, elected to receive membership in this system by the payment of arrearages under the conditions set forth by this act.'

"This is the same as the language used in the 1937 amendment and except for the date is the same as the language used in Paragraph (2) of Section 8 of the 1921 amendment.

"It is hard to conceive that the Legislature intended that those teachers who had not elected to receive membership under the prior Acts or amendments thereto would be given the benefits of the 1945 Act but that those teachers who had elected to receive such membership under such Act or its amendments should be discriminated against by not permitting them to receive the benefits of the 1945 Act.

"In 50 American Jurisprudence, paragraph 372, under statutes, it is said:

'An intent to discriminate unjustly between different cases of the same kind is not be ascribed to the legislature. * * *'

"I am therefore of the opinion that when Paragraph (2) of subdivision (a) of Section 3 of the 1945 Act is construed in the light of the purpose sought to be accomplished as shown by the Act and its legislative history, that the Legislature intended that those teachers who had elected to receive membership in the Fund
under the original Act or amendments thereto in 1921, 1937, and 1939 were to receive benefits of the 1945 Act under Paragraph (2) of subdivision (a) of Section 3 of the 1945 Act. Such teachers would have to pay arrearages under the provisions of subdivision (h) of said section of said Act.”

In a more recent opinion of this office to you, same being 1949 Indiana Opinions of the Attorney General, Official Opinion No. 112, it was held that “teacher’s rights in the retirement fund are governed solely by the provision of the law under which she claims membership therein.”

It is to be observed that the underscored part of the above quoted statute specifically provides that no interest shall be charged for time not credited to the teacher. A teacher joining the 1949 fund is given the right to elect what years of teaching service she desires to claim credit for in the retirement fund. It might differ from those years claimed in a previous fund. Again, a teacher may have retired and failed to teach for several years and on rejoining the fund she certainly could not claim credit for teaching service while on retirement. To charge this teacher with interest during such retirement is not contemplated by the above statutory provision and as a matter of fact, under Clause (f) of Section 1 of Chapter 130, of the Acts of 1949, in the section concerning the return of a teacher to service after retirement, it provides in such case that “no interest shall be charged for time not credited to the teacher.” This is an unmistakable indication of legislative intent.

It is further to be observed that under the language of the above quoted section of the 1949 law the schedule of rates and assessments against a teacher are to be compiled by the actuaries for the fund based upon the provisions of the 1949 Act and not upon the provisions of the preceding statutes. This is true for the reason a teacher taking membership in the 1949 fund takes it with its disadvantages and obligations as well as having the right to claim any additional benefits afforded by the act.

For the foregoing reasons, and under the above authorities, I am of the opinion a member of a previous retirement fund who transfers her membership into the 1945, 1947 or 1949
Teachers' Retirement Fund is not chargeable with interest on his or her arrearages for time not credited to the teacher and that interest charges on his arrearages are governed by the provisions of the statute setting up the fund in which he last claims membership. A teacher now a member of the 1945 or 1947 fund would be governed by it provisions as to interest on arrearages and one transferring into the 1949 fund would then be governed by the provisions of the 1949 law.

OFFICIAL OPINION NO. 17

March 15, 1950.

Mr. Thomas R. Hutson,
Commissioner of Labor,
225 State Capitol Building,
Indianapolis, Indiana.

My Dear Mr. Hutson:

I have your letter under date of March 2, 1950, in which you request an official opinion of the following question, to-wit:

"Under Indiana law, is it required that the wife of an employee join with her husband in a written assignment of wages authorizing the employer to deduct union dues for the employer?"

This subject has been generally discussed in previous opinions rendered by this office, but since your present query is different from those previously submitted and answered in official opinions numbered one hundred nine (109) (1949) and six (6) (1950), I again refer to the wage assignment law as follows:

"No assignment of his wages or salary by a married man, who shall be living with his wife and shall be the head of a family, residing in this state, to any wage broker, or any other person, for his benefit, shall be valid or enforceable without the consent of his wife, evidenced by her signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments of conveyances,